

ELECTION

The Examiner has required election between Group I (claims 1-6), Group II (claims 7-11), Group III (claims 12-14) and Group IV (claims 15-19). Applicant elects Group I, claims 1-6, with traverse. New claim 20 is readable on the elected invention. The restriction requirement is traversed as being improper for the following reasons.

REMARKS

In order to maintain a restriction requirement, the Examiner has the initial burden of showing:

- (1) that the restricted groups are independent or distinct; and
- (2) that there would be a serious burden on the Examiner if restriction is not required.

M.P.E.P. § 803.01. Applicant respectfully submits that the Examiner has not met the burden of showing that the inventions are either independent or patentably distinct.

The Examiner alleges that Groups I-IV are related as subcombinations usable together in a single combination. However, the Examiner has failed to show that the inventions are distinct. In order to show distinctness:

The examiner must show, by way of example, that one of the subcombinations has utility other than in the disclosed combination. [Emphasis added.]

In alleging alternative utilities, the Examiner has merely recited the language of the claims, and has not shown that any of the alleged subcombinations would find utility other than in the disclosed combination, i.e., in an identification system. For this reason alone, the Examiner has failed to meet his burden of demonstrating that restriction is proper and the claims of Groups II-IV should be examined together with the elected Group I claims.

Additionally, Group IV is not a combination, but a process claim. For this additional reason, the restriction requirement is improper and Group IV should be examined with the elected claims.

Applicant respectfully submits that the restriction requirement is deficient in that it merely concludes that the inventions are patentably distinct without providing an example, as is required by M.P.E.P. 806.05(d) (which, incidentally, is the same section of the M.P.E.P. relied upon by the Examiner in support of the restriction requirement). The purpose of requiring the examiner to provide an example is to allow the Applicant an opportunity for rebuttal, whereby the Examiner must then either document or otherwise support a viable alternative or withdraw the requirement for restriction. By providing only conclusions without the required supporting example, the Examiner is depriving Applicant of an opportunity to rebut such conclusions. It is unfair to force Applicant to incur the additional time and expense of dividing the invention among multiple applications without at least providing a reasonable example supporting the restriction requirement and allowing Applicant an opportunity for rebuttal. Therefore, it is respectfully requested that the Examiner either support the restriction requirement with an example as required by the M.P.E.P., or, withdraw the restriction requirement and examine claims 7-19 along with the elected claims 1-6 and 20.

Furthermore, even if the Examiner is able to show an example of an alternative utility, the restriction requirement is still untenable, since there is no serious burden on the Examiner. The Examiner has not demonstrated that there would be a serious burden if the Groups were to be examined together. M.P.E.P. § 803 states that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). In the present case, the claims are sufficiently such that there would be no serious burden if the restricted claims are examined together with the elected invention.

For the above reasons, withdrawal of the restriction requirement and examination all claims pending herein is respectfully requested.

Respectfully submitted,



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